



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

ELC CASE NUMBER 423 OF 2008

JOSPHAT MACHARIA.1ST PLAINTIFF
CHARLES MACHARIA GAKENGE..... 2ND PLAINTIFF
PETER AZEL3RD PLAINTIFF
MILTON N. MAHUGU. 4TH PLAINTIFF
JAMES MINA MUTUATO.....5TH PLAINTIFF
ADANGA AGISU.....6TH PLAINTIFF
OBIRI MORARA.7TH PLAINTIFF
EVANS MUSHEGA MUGILWA.8TH PLAINTIFF
SAMUEL KIBE KIARIE.....9TH PLAINTIFF
CHRISTOPHER OKEMWA.....10TH PLAINTIFF
PATRICK ANDAYI.11TH PLAINTIFF
STEPHEN M WAIRE.....12TH PLAINTIFF
CHARLES NJAGI KIBABAI.13TH PLAINTIFF
GERALD KIMARI.....14TH PLAINTIFF
JOSECK THUO NGETA.15TH PLAINTIFF
ROBINSON K OLAKI.....16TH PLAINTIFF
MAURICE ONYANGO ODHIAMBO.17TH PLAINTIFF
JOHN MBUGUA KABUCHO.18TH PLAINTIFF
TITUS SAMWEL KASWAILI.....19TH PLAINTIFF
TITUS AGISU MBEVA.20TH PLAINTIFF
DAVID KITANGALA AGISU.....21ST PLAINTIFF
STARBON ONACH AGISU.....22ND PLAINTIFF

GEORGE HENRY WANDABWA.....	23 ND PLAINTIFF
LEVI OYUGI MUGILWA.	24 RD PLAINTIFF
PATRICK KINYOLO MBITHI.	25 TH PLAINTIFF
A ANSELM NJOGU KIGOMO.	26 TH PLAINTIFF
FREDRICK NDUGIRE MWANGI.	27 TH PLAINTIFF
KENNEDY MULANDI MALINDA.	28 TH PLAINTIFF
WINSTON WINNER SASATI.	29 TH PLAINTIFF
JAMES OWONDO RATTA.....	30 TH PLAINTIFF
SIMON MUTELA JUDAH.	31 ST PLAINTIFF
JOSEPH MACHARIA RUKU.....	32 ND PLAINTIFF
LAWRENCE MUTUA MWIKIA.	33 ND PLAINTIFF
SAMSON K. KIMOTHO.....	34 TH PLAINTIFF
MR & MRS. MIKE NDAWA MWIKYA.....	35 TH PLAINTIFF
SOLOMON KIRUMBA.....	36 TH PLAINTIFF
WILLIAM ITAMBI MWADIME.....	37 TH PLAINTIFF
GORDON R W WANDIO.	38 TH PLAINTIFF
LEONIDAS KAMENDE.....	39 TH PLAINTIFF
MUENI KAMENDE.....	40 TH PLAINTIFF
GRACE MUTHONI CHEGE.....	41 ST PLAINTIFF
REGINA WAMBUI KAARA.....	42 ND PLAINTIFF
ROSE MUTHONI THUO.....	43 RD PLAINTIFF
JULIA WAMBURA KINAI.	44 TH PLAINTIFF
EVA WANJIKU WAMBUGU.....	45 TH PLAINTIFF
CHRISTINE MBINDU MUSYOKA.....	46 TH PLAINTIFF
FRIDAN WANDIA KABUL.....	47 TH PLAINTIFF
ALICE NALIKA SHITAMBASI.....	48 TH PLAINTIFF
BETH WANJIKU G.....	49 TH PLAINTIFF
KENYA ASSEMBLIES OF GOD CHURCH	

(Suing through Isaac kasili, Casper Musungu

*and Harun Kahuki).....*50th PLAINTIFF

VERSUS

LELTAYET COURT DEVELOPERS LTD.....1ST DEFENDANT

FUELEX KENYA LIMITED.....2ND DEFENDANT

RULING

1. This is a Ruling in respect of a notice of motion (sic) dated 16th June 2020 in which the Applicants seek to be enjoined in these proceedings as Plaintiffs. The dispute herein relates to LR No.22143 (suit property) which is at Komarock area of Nairobi. The 1st and 2nd Defendants had entered into an agreement whereby the 2nd Defendant was to purchase the suit property. The suit property was transferred to the 2nd Defendant but the 2nd Defendant was unable to clear the purchase price.
2. The 1st and 2nd Defendants entered into a memorandum of understanding in which it was agreed that the suit property which was 10 acres was to be subdivided into sub-plots which were to be sold in order to raise money for refund of the amount which the 2nd Defendant was owed. It is on this understanding that the sub-divided plots were sold to various persons who took possession.
3. The agents of the 2nd Defendant later went to the ground and threatened to evict the purchasers of the sub-plots. This is what made the Plaintiffs to move to court. There were originally twenty Plaintiffs. Thirty more Plaintiffs were enjoined in the suit making a total of fifty Plaintiffs. The Applicants who purchased the sub-plots which were being sold by the 1st Defendant have now also applied to be enjoined as they purchased the sub-plots from the 1st Defendant.
4. The 2nd Defendant has opposed the Applicants application based on a replying affidavit sworn on 26th June 2020. The 2nd Defendant contends that the Applicants application is brought in bad faith and that the Applicants have been aware of this suit which was filed in 2008. The 2nd Defendants also argues that the Applicants have not explained the delay in filing this application.
5. The 2nd Defendant further argues that the Applicants have no privity of contract with it as they purchased their respective plots from the 1st Defendant who had no capacity to sell the same as the 2nd Defendant is the registered owner of the suit property. The 2nd Defendant further argues that the Applicants are seeking to avoid the limitation period by seeking to be enjoined this suit.
6. I have considered the Applicants' application as well as the opposition to the same by the 2nd Defendant. I have also considered the submissions filed. The only issue for determination is whether the Applicants have demonstrated that they have sufficient interest in this matter to warrant their joinder. There is no doubt that all the fifty Plaintiffs in this suit bought their respective plots from the 1st Defendant. The three Applicants also purchased their plots from the 1st Defendant. It is therefore clear that they have common issues which can be addressed in this matter. At this stage, the court's concern is to determine whether the Applicants have demonstrated that they are entitled to be enjoined in these proceedings.
7. As the Applicants purchased their plots from the 1st Defendant, just as the other existing fifty Plaintiffs, I find that the Applicants should be enjoined in this case as the 51st, 52nd and 53rd Plaintiffs respectively. The Plaintiff shall be amended accordingly to reflect the three as Plaintiffs. They should then be served with pleadings in this case. The amendments should be done within 14 days. Costs of this application shall be in the cause.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** on this **25th day of February 2021.**

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Kegode for Applicants

Mr Omondi for Mr Gachie for Plaintiff

Mr Gititu for Mr Munyororo for 2nd Defendant

Court Assistant: John

E.O.OBAGA

JUDGE